IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO. No. 403/2003

Judgment delivered on: October 29, 2007

Smt. Vidya Mowar & Anr. ..... Petitioner
Through: Mr. O.P. Goyal, Adv.

versus

Mohd. Sahuket Ali & Ors. ..... Respondents
Through: Mr.D.K. Sharma for respondent No. 3.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J. Oral:

In the present appeal the appellant is primarily

aggrieved on two grounds i.e. firstly, the Tribunal has taken into consideration 2/3rd of the personal expenses instead of 1/3rd and secondly, wrong multiplier has been applied.

Relevant facts of the instant case in brief are that on 22.1.1992 at about 10.00 p.m. the deceased Shri Tarun Hari Mowar was going from Janakpuri towards Safdurjung Enclave as a pillion rider on two wheeler scooter driven by his friend Vinay and when they reached Moti Bagh crossing on the Ring Road, Shri Vinay slowed down his scooter on account of barriers laid down on the road and all of a sudden a truck bearing registration No. DEG-4184 driven in the most rash and negligent manner came from behind at a very high speed struck the scooter and both driver and pilliion rider of the scoooter fell on road and before deceased could get up, the truck ran over his left side causing grevious hurt. The deceased was rushed to Safdarjung Hospital immediately but he succumbed to his injuries on the following day at 5.50 a.m. A claim petition was filed before the MACT and vide order dated 19.4.2003, the Tribunal awarded Rs. 2,33,500/-

@ 9% to the claimants. Aggrieved with the said order the appellant has preferred present appeal.

Mr. O.P. Goyal, counsel for the appellant contends that as per II Schedule of the Motor Vehicles Act the multiplier of 13 should have been made applicable after taking into consideration the age of the mother, whose age at the time of accident was 52 years. On personal expenses the contention of the counsel for the appellant is that in catena of judgments the Supreme Court has taken into consideration 1/3rd of the personal expenses and not 2/3rd and, therefore, in the present case also the same personal expenses were required to be taken into consideration. Counsel for the appellant has also placed reliance on the judgment of the Hon'ble Supreme Court reported in **2003 ACJ 2152 Gyanchand Jain and Anr. vs Parmanand & Ors.**

Per contra Mr. D.K. Sharma, counsel appearing for the respondent states that the correct multiplier has been applied by the Tribunal by taking average age of both the

petitioners, parents of the deceased. Counsel further contends that the age of the father was more than 60 years and the age of the mother was more than 52 years and taking the average of both the said ages the Tribunal has applied the multiplier of 8 in accordance with the II Schedule of the Motor Vehicles Act. The contention of the counsel is that no grievance can be made by the appellant as far as multiplier is concerned. On the deduction of 2/3rd personal expenses the contention of the counsel is that the deceased was 27 years of age and, therefore, in the normal course he would have got married within a period of one or two years and thereafter he would have spent at least 2/3rd of his personal income on himself and his family. Counsel for the respondent thus contends that the Tribunal has rightly taken into consideration 2/3rd of the personal expenses to be spent by the deceased on himself and on his family leaving 1/3rd towards dependents for their subsistence.

I have heard learned counsel for the parties and perused the records. On the submission of the counsel for

the appellant relating to the multiplier, I do not find any infirmity in the impugned Award so far as the same has taken into consideration the average age of the appellants/dependant members as 56.5 years. The father of the deceased was more than 60 years of age and the mother of the deceased was 52 years of the age at the time of death of the deceased. I do not accept the contention of the counsel for the appellants that amongst the parents also the age of that parent, which is lowest has to be taken into consideration and then the multiplier as per the II Schedule has to be made applicable. This contention of the counsel even does not find support from the judgment of the Supreme Court relied upon by him in **Gyanchand Jain's case (supra)**. In that case also the appellants/claimants therein were father and mother aged 55 and 48 years respectively and multiplier of 12 was upheld by the Supreme Court. Had the Supreme Court taken the lower age of 48 years into consideration then as per the II Schedule of the Motor Vehicles Act the appropriate multiplier applicable

would have been 13 years and not 12 years. I, therefore, do not find any infirmity in the impugned order so far as the multiplier of 8 is concerned.

As regards the second contention of the counsel for the appellant, I find myself in agreement with the same. It is a well settled law that the compensation to be granted in favour of the claimants has to be just and fair and the same cannot be calculated with an arithmetic precision. In the catena of judgments the Hon'ble Supreme Court has taken into consideration 1/3rd of the personal expenses even where the deceased was of young age and even unmarried. I, therefore, do not find any justification in the impugned order deducting 2/3rd personal expenses from the income of the deceased.

In this regard in ***Fakeerappa vs. Karnataka Cement Pipe Factory,(2004) 2 SCC 473*** Apex Court has observed as follows:-

> **"7.** What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The

> deceased undisputedly was a bachelor. Stand of the insurer is that after marriage, the contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction.
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> **8.** It has to be noted that the ages of the parents as disclosed in the claim petition were totally unbelievable. If the deceased was aged about 27 years as found at the time of post-mortem and about which there is no dispute, the father and mother could not have been aged 38 years and 35 years respectively as claimed by them in the claim petition. Be that as it may, taking into account special features of the case we feel it would be appropriate to restrict the deduction for personal expenses to one-third of the monthly income. Though the multiplier adopted appears to be slightly on the higher side, the plea taken by the insurer cannot be accepted, as there was no challenge by the insurer to the fixation of the multiplier before the High Court and even in the appeal filed by the appellants before the High Court, the plea was not taken."

In view of the aforesaid, the 1/3rd personal expenses from the income of the deceased have to be deducted and to this extent the order of the Tribunal is modified.

Parties are directed to appear before the Tribunal on 19th November, 2007 for granting the said enhancement and thereafter giving necessary directions as to how the said amount is to be disbursed/apportioned. The Tribunal need

not send notice to the other respondents except the insurer, who is the only contesting respondent before this Court.

With these directions the present appeal is disposed of.

October 29, 2007 **KAILASH GAMBHIR, J.**
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